

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JESSIHA LANCASTER,

Plaintiff,

v.

HAROLD CLARK, *et al.*

Defendants.

Case No. 07-5251 RJBKLS

ORDER DENYING THIRD MOTION
FOR APPOINTMENT OF COUNSEL

Before the Court is Plaintiff's third motion for appointment of counsel. (Dkt. # 130). Having reviewed the motion, Defendants' response (Dkt. # 131), and balance of the record, the Court finds for the reasons stated below that Plaintiff's motion should be denied.

I. DISCUSSION

As Plaintiff has been repeatedly advised, there is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues

1 involved. *Wilborn*, 789 F.2d at 1331. Neither of these factors is dispositive and both must be
2 viewed together before reaching a decision on request of counsel under Section 1915(d). *Id.*

3 On December 10, 2007, immediately after the Court denied his first Motion for
4 Appointment of Counsel, Plaintiff filed his second Motion for Appointment of Counsel. (Dkt. #
5 107). Plaintiff provided no new information that warrants the appointment of counsel. Plaintiff
6 argued that he requires assistance of counsel because he suffers from mental health disorders that
7 affect his ability to function on a daily basis. However, Plaintiff did not demonstrate any difficulty
8 articulating his claims or expressing the issues in this case, nor did he provide any information to
9 indicate that he is likely to succeed on the merits.
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11 In the present motion, Plaintiff expresses concerns about his ability to respond to
12 Defendants' pending summary judgment motion. (Dkt. # 130). The difficulties claimed by Plaintiff
13 are of the type which many pro se litigants encounter and do not indicate exceptional factors
14 warranting the appointment of counsel.
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16 The court is troubled by Plaintiff's repeated motions raising no exceptional circumstances
17 that were not addressed or previously considered by the court. Under Rule 11 of the Federal Rules
18 of Civil Procedure, Plaintiff's signature on a pleading is an indication that the motion is brought in
19 good faith and is not designed to needlessly increase the cost of litigation. The court accepts that
20 Plaintiff's third motion was brought in good faith. However, Plaintiff is warned that any future
21 motions should address the proper legal standards for appointment of counsel. Failure to do so may
22 result in sanctions, which may include costs, monetary sanctions, and possibly dismissal of the
23 action.
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25 Accordingly, the Court finds that counsel is not necessary in this case and Plaintiff's third
26 motion to appoint counsel (Dkt. # 130) is **DENIED**.
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1 The Clerk is directed to send copies of this Order to Plaintiff and counsel for Defendants.

2 DATED this 24th day of June, 2008.

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6 Karen L. Strombom
7 United States Magistrate Judge
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